

# EXHIBIT B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GAVRILIDES MANAGEMENT COMPANY  
LLC, GAVRILIDES PROPERTY  
MANAGEMENT LLC, & GAVRILIDES  
MANAGEMENT WILLIAMSTON LLC,

Case No. 20-258-CB

HON. JOYCE DRAGANCHUK

Plaintiffs,

v

MICHIGAN INSURANCE COMPANY,

Defendant.

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**ORDER GRANTING DEFENDANT MICHIGAN INSURANCE COMPANY'S  
MOTION FOR SUMMARY DISPOSITION**

At a session of said Court, held in the  
City of Mason, County of Ingham,  
State of Michigan, on July 21, 2020

PRESENT: Hon. JOYCE DRAGANCHUK  
CIRCUIT COURT JUDGE

This matter having come before the Court on Defendant Michigan Insurance Company's Motion for Summary Disposition, and the Court having reviewed the briefs from both parties and heard oral argument from both parties in open court, and the Court being otherwise fully advised in the premises:

Defendant Michigan Insurance Company's Motion for Summary Disposition has been GRANTED for the reasons stated from the bench on the record.

**IT IS SO ORDERED** that the judgment in favor of Defendant is entered as a matter of law pursuant to MCR 2.116(c)(8), and that this matter is dismissed with full prejudice.

This Order resolves the last pending claim and closes the case.



Hon. JOYCE DRAGANCHUK  
CIRCUIT COURT JUDGE P-39417

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

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GAVRILIDES MANAGEMENT COMPANY,  
Plaintiff,

vs. File No. 20-258-CB

MICHIGAN INSURANCE COMPANY,  
Defendant.

\_\_\_\_\_/

DEFENDANTS MOTION FOR SUMMARY DISPOSITION  
BEFORE THE HONORABLE JOYCE DRAGANCHUK, CIRCUIT COURT JUDGE  
LANSING, MICHIGAN - WEDNESDAY, JULY 01, 2020

APPEARANCES:

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WITNESSES

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None .

EXHIBITS

None admitted.

1                   Lansing, Michigan

2                   Wednesday, July 01, 2020

3                   2:58:57 PM

4                   THE COURT: This is, pardon me if I massacre  
5                   this, Gavri--, Gavrilides Management Company, et al versus  
6                   Michigan Insurance Company, docket number 20-258-CB. And  
7                   this is the time set for Defendant Michigan Insurance  
8                   Company's Motion for Summary Disposition. And just for the  
9                   record, could I have your appearances, please?

10                  MR. HEOS: Yes, your Honor. Matthew Heos and Nick  
11                  Gavrilides is here in the courtroom also with me. He is  
12                  the owner of the immediate plaintiff company's.

13                  MR EMRICH: Henry Emrich on behalf of Michigan  
14                  Insurance Company, your Honor and my assistant Chenney  
15                  Ward.

16                  THE COURT: Okay, thank you. And your motion, Mr.  
17                  Emrich, if you wish to go ahead.

18                  MR. EMRICH: Thank you, your Honor. I am going to  
19                  assume that the Court has read all of the pleadings in  
20                  this case, so I'll try not to belabor some of the points.  
21                  I think the, the key fact that we need to focus on is that  
22                  as we've argued is that there's no question here but the  
23                  policies that insure Mr. Gavrilides properties against,  
24                  against direct physical loss or damage to the property and  
25                  contrary, any claim with the policy benefits in question

1 this business income coverage is illusory, the policy in  
2 question here clearly provides that for the business  
3 coverage, the business income coverage to apply and, and  
4 most of the other primary coverages under their policy,  
5 there must be a direct physical loss of or damage to the  
6 insured property in order for it to apply.

7 And I think it's important as we'll discuss  
8 later in our argument depending on what Mr. Heos has to  
9 say, why this is important, we must focus on the fact that  
10 there must be direct physical loss or damage to the  
11 insured property and not direct physical loss of use of or  
12 damage to the property as has been suggested by Mr.  
13 Gavrilides and his attorney in order for the coverage at  
14 issue to apply.

15 While I acknowledge, your Honor, that this is a  
16 somewhat unique, extraordinary if you will, matter to be  
17 filing at this point in the proceedings as our initial  
18 pleading; I think it's important to understand that when  
19 we look at Mr. Gavrilides complaint, it does not contain  
20 one single allegation that this insured property has in  
21 any way been damaged or lost. To the contrary, the  
22 allegations in the complaint affirmatively allege that the  
23 plaintiff business interruption claim is based on the  
24 "Stay at Home" orders of Governor Whitmer. There is no  
25 allegation of any kind that the property in question has

1 in any way been damaged, lost or anything of the sort.

2           Given that this motion has been brought under  
3 2.116(c)(10), plaintiff must produce some evidence to  
4 contradict the uncontroverted facts that have been alleged  
5 not only in the complaint, but in the affidavit submitted  
6 Mr. Gavrilides and in any of the other materials that Mr.  
7 Heos has attached to his response as, as indicated, most  
8 importantly, the affidavit of Mr. Gavrilides that  
9 reiterates the admissions in the complaint that there has  
10 not been any loss of or damage to either of the properties  
11 for which they seek coverage.

12           The insureds property today exists in the very  
13 same condition as it existed the day prior to the  
14 effective date of the "Stay at Home" order. They have not  
15 been lost, they have not been damaged, they have not  
16 required any repairs because of any damage to those  
17 properties. The business operation, its, its operation as  
18 a restaurant today is, is the same as the day prior to the  
19 effective date of the order, albeit with some modifi-  
20 cations that had been required to avoid grouping and to  
21 maintain social distancing in, in a sense improvements to  
22 the real estate. Not repairs, you know, and, and it's  
23 been maintained as a take-out, take-out operation at least  
24 until recently when they resumed the dining operation.  
25 There has been no loss of or damage to either building



1 that has prevented the plaintiff from operating as a  
2 restaurant or entering it for that matter if--, as they  
3 have. If plaintiffs wanted to sell either building today,  
4 they could do so. And while plaintiffs have provided some  
5 speculative evidence about the decreased value of that  
6 property, although, as I read Mr.--, as I read the  
7 materials that Mr. Heos kindly attached to his response,  
8 the fact of the matter is it pointed out in that article  
9 was that while they operation of a commercial property may  
10 get harder, it's not impossible to operate it in the  
11 future under our new normal.

12 Because plaintiffs complaint, the affidavit, the  
13 other information that has been provided to your Honor  
14 provides no evidence of any damage to that property.  
15 Plaintiffs could never prove that either property suffered  
16 any direct physical loss from the imposition of Governor  
17 Whitmer's emergency order. And thus, could never recover  
18 business interruption coverage under this policy based on  
19 the facts that have been presented to the Court. The same  
20 holds true under the business cover, income coverage, if a  
21 civil authority prevents or prohibits access to either  
22 property because of direct physical damage to an adjacent  
23 or nearby property for the very same reason. There has  
24 been no direct physical loss or damage to any adjacent  
25 property that has been alleged, that has been provided to

1 the Court in Mr. Heos response. And frankly, when you look  
2 at the order that they have, that is at issue in this  
3 case, there's nothing there that prevents access to Mr.  
4 Gavrilides properties whatsoever.

5 In summary, your Honor, there are no facts  
6 alleged in the complaint or in any of the materials that  
7 I've looked at, including Mr. Gavrilides affidavit, that  
8 shows there has been direct physical loss of or damage to  
9 the insured property. And for those reasons, your Honor,  
10 we believe that our motion--, for those reasons alone, we  
11 believe our motion for summary disposition should be  
12 granted.

13 I'd just like to make a couple of additional  
14 points before I shut up. I really believe summary  
15 disposition is warranted on this basis alone and I would  
16 turn the Court to the case that we've discussed in our, in  
17 our brief, your Honor, that's referred to Universal  
18 Insurance Production versus Chubb. And that's the decision  
19 of the Eastern District of Michigan involving a claim that  
20 involved insured property. It was damaged by a pervasive  
21 odor that developed in the property as a result of mold  
22 that grew in the property because of some water seepage.  
23 And why that case is important is because it discusses the  
24 Michigan Rules of Contract Interpretation, that still  
25 apply today, policy language is clear and unambiguous on

1 its face, which we believe is clearly the case here that  
2 states that the words and the terms of the policy should  
3 be enforced utilizing plain and commonly understood  
4 meanings.

5 And when I said earlier that that's important  
6 when we talk about what direct physical loss of or damage  
7 to property means, it means we look at those words. We  
8 don't add words such as loss of use, that Mr. Heos and Mr.  
9 Gavrilides have added in order to understand what we're  
10 talking about here. We look at the language in the policy.  
11 Every case that Mr. Heos produced your Honor, says the  
12 very same thing. In Univer--, Universal, like here, the  
13 policy was an 'all-risk' policy that required, like here,  
14 direct physical loss or damage to the insured property in  
15 order to trigger coverage unless that coverage was  
16 excluded.

17 As Universal pointed out, applying a dictionary  
18 meaning of direct and physical as meaning something  
19 immediate or proximate as a premise to something that is  
20 distant or incidental and physical meaning something that  
21 has a material existence meant in the context of a loss  
22 involving a contaminant that, unlike here, per the uncon-  
23 troverted allegations of the complaint and other evidence  
24 produced by plaintiff in response to this motion. That in  
25 order for direct physical loss of the property in this

1 context, the contaminant must actually alter the structure  
2 integrity of the property in order to trigger coverage  
3 under language that is at issue in this case. And it  
4 didn't happen in Universal, as the Court denied coverage  
5 there, granted affirmed summary disposition. And  
6 importantly your Honor, it hasn't even been alleged in  
7 this case. Regardless of any authority to the contrary,  
8 anywhere else in the country, this remains the law in our  
9 courts when interpreting policy terms at issue. There is a  
10 requirement that there be direct physical loss of or  
11 damage to property. And the allegations produced here in  
12 the complaint and the evidence that's been attached have  
13 specifically acknowledged no such contamination and no  
14 such damage to the property as a result of that contami-  
15 nation.

16 As in Universal, your Honor, the mere presence  
17 of odor or even mold was not any evidence of structural or  
18 tangible damage to the insured property. And as such, no  
19 direct physical loss or damage to the property had-, was  
20 occurred. Here, your Honor, we have the very same thing  
21 except that we have not even had any allegations of any  
22 damage to the property caused by this unfortunate, this  
23 horrible virus.

24 Finally, and although we do not believe the  
25 Court even has to get to this point, even if we assume for

1 purposes of this motion that contamination occurred on  
2 each premises and that somehow effected the structural  
3 integrity of either building, again, neither scenario is  
4 alleged. And even if it were, we do not believe under the  
5 circumstances and the science that exists that it would  
6 necessarily constitute direct physical loss over damage to  
7 the property. The buyer's exclusion of the policy, which  
8 clearly and unequivocally states that it applies to all  
9 coverages and endorsement and that the company will not  
10 pay for loss or damages caused by or resulting from any  
11 virus, bacteria or other microorganism that induces or is,  
12 is capable of inducing physical distress, illness or  
13 disease. And Lord knows, that that has certainly been the  
14 case with what's happened with Covid-19 throughout our  
15 country.

16           Clearly, your Honor, that exclusion, again, I  
17 don't believe you even have to get there, but that  
18 exclusion would clearly exclude any claim here even if  
19 plaintiff's could prove direct physical loss of or damage  
20 to the insured property or any nearby property that  
21 resulted in a civil authority issuing an order prohibiting  
22 access to the property. As of eight days ago, your Honor,  
23 they have only been few jurisdictions in this country,  
24 Florida and Pennsylvania, that have discussed and applied  
25 this, a similar exclusion as at issue in this case and in

1 every one of those cases, the Court has enforced that  
2 exclusion as written because it's clear and unambiguous.  
3 Again, your Honor, for all the reasons that we've set  
4 forth here today and the brief that we filed and our  
5 reply, we request that the Court grant our Motion for  
6 Summary Disposition at this time. Thank you.

7 THE COURT: Thank you. Mr. Heos?

8 MR. HEOS: Thank you, your Honor and may it  
9 please the Court. And obviously Mr. Emrich and I have a  
10 different interpretation of direct physical loss of or  
11 damage to covered properties because here the loss comes  
12 from the issue of the executive order restricting use of  
13 property. Physically you cannot use for, for dine-in  
14 services any of the interior of the building for a period  
15 of time. And a complete prohibition isn't contemplated by  
16 the language of the contract, I think a limited  
17 restriction also falls within the coverage. And I think  
18 that if you're gonna accept the defendants argument you  
19 would have to limit the meaning to destruction of the  
20 physical building itself, but we know that the coverage  
21 extends to non-destructive loss, civil authority being  
22 one.

23 I put in example in the brief subterranean  
24 pollution, you can look at asbestos or a computer virus is  
25 something that would occur that there would be no physical

1 destruction to the property itself. The fact of the matter  
2 is that Mr. Gavrilides can't use the covered properties  
3 because of or he's lost rather the use of those properties  
4 because of the order and it looks like that will continue  
5 in some form for a while. So, I think that counsel is  
6 wrong in trying to limit the scope even with the case law  
7 he cited, most of which is persuasive and not binding.  
8 That's number one, Judge.

9 And as for the virus exclusion itself, the only  
10 case law we have relates to person to person transmission  
11 of a virus at the covered property. And I think that fits  
12 more with what's going on. We see in the news that Harpers  
13 in East Lansing and even the Hotcat in Kalamazoo is making  
14 headlines of people contracting Covid there. But, the  
15 impetus of the order was to protect public health and  
16 welfare, which is the governor's duty. It's not caused by  
17 a virus. It would be the same order as with the damn in  
18 Midland being issued to protect public health and welfare.  
19 It wasn't caused by a flood. It was caused by the  
20 Governor's duty to act and protect the people she's  
21 charged with protecting and I think that's what happening.

22 Or it's distinguishable from the case and I  
23 think it's Bowler, the case cited regarding the virus. And  
24 I think that if you go further in accepting defendant's  
25 position, then we get into the illusory promise of well if

1 the government issues an order, we're not gonna cover it  
2 because any decision of a government body or group of  
3 people is excluded. And so then, you get into the circle  
4 in the contract where if you're going to buy into counsels  
5 logic, it would make that provision illusory. And for  
6 those reasons, I think that the motion should actually  
7 roll back on the defendants because the language to  
8 support the claim, to the extent that the Court thinks  
9 there's a deficiency in my pleading and is gonna grant  
10 defendants motion, I'd like Leave to Amend the Complaint.  
11 But, I don't think that's the case here. And with that,  
12 I'll leave it, if the Court would like to ask any  
13 questions, I'm happy to take them.

14 THE COURT: I don't have any. Thank you. I'll  
15 give Mr. Emrich rebuttal time.

16 MR. EMRICH: Thank you, your Honor. Your Honor,  
17 what I would say is that when we talk about these cases  
18 that Mr. Heos has mentioned that might provide coverage in  
19 certain situations, I read those cases a little while ago  
20 and I'm kind of tired reading some of these cases about  
21 insurance coverage. But, the point in every one of those  
22 cases is that the condition she referred to actually  
23 caused damage to the property.

24 In this case, there has not been any such  
25 damage. And if we look at what the coverage for business



1       loss or business--, the business income loss that they're  
2       seeking says, it says that if the business, the coverage  
3       would apply if the business operation is suspended  
4       provided the suspension must be caused by the direct  
5       physical loss of or damage to property. In this case, that  
6       hasn't occurred. Nothing prevents Mr. Gavrilides from  
7       using that property. It has been used as such. The fact  
8       that there may be other coverages that may provide some  
9       limited coverage, they're against what Mr. Heos is arguing  
10      because clearly, if those coverages were covered under  
11      this language, then why have a special coverage that  
12      provides certain conditions for its application.

13               The point is, in each of those civil authority  
14      cases that he talked about, the property actually  
15      sustained damage. Here it didn't sustain damage. As to his  
16      claim in this case, that he wants an opportunity to amend  
17      his complaint if the Court feels compelled to grant my  
18      motion, what is that going to accomplish? He's already  
19      alleged in his complaint and his client has already signed  
20      an affidavit where he no doubt put his hand up and swore  
21      to the contents of that affidavit in which he said there  
22      has been no damage to that property.

23               We don't create coverage by-, because somebody  
24      thinks they ought to have coverage. But, that, that, that  
25      whole line of cases Roy versus Continental Insurance and

1 some of the other cases in our, in our brief that we  
2 cited, clearly supports the notion that the reasonable  
3 expectation concept doesn't apply in Michigan. It just  
4 doesn't cut it. There is no coverage here, your Honor.  
5 That exclusion is clear. If the Court feels that there may  
6 be or that there may be a situation that would give rise  
7 to, but again, you have to come forward at the time that  
8 you, that you respond to this motion with some evidence  
9 that suggests that. That hasn't happened here. I mean even  
10 when you look at the response that he's filed, he talks  
11 about scenario's that have absolutely no bearing to this  
12 case.

13 And you know, I'll just make one last point,  
14 your Honor, you know, when I was a young Prosecutor, I had  
15 the benefit of being able to argue a number of cases to  
16 juries that required me to prove the defendant's guilt  
17 beyond a reasonable doubt. And in those cases, I was  
18 trained to listen closely to the defendant's argument and  
19 had been the case where the facts were particularly  
20 egregious, a defense attorney would often not even talk  
21 about those facts and talk about the law. And he talked  
22 about how that law was somehow created this reasonable  
23 doubt in hopes of creating some confusion on the part of  
24 one juror who might then find in his clients favor because  
25 reasonable doubt existed. And, and in those cases, I would

1 make sure that when I got up in rebuttal, just as I have  
2 been given the opportunity to here, I would point that out  
3 to the jury and indicate to them that there's a reason for  
4 that. And that's because they didn't want you to talk  
5 about the facts that clearly supported conviction.

6 On the other hand, if it was a case where the  
7 law, you know, or the facts may have been murky, but the  
8 law was clear, the defense attorney would only focus on,  
9 you know, on those facts and not talk about the law. And  
10 again, I point that out to the jury there. But, in this  
11 case, you know, and there were cases back then to, like  
12 our case here that were neither supported by the facts or  
13 the law. Which I believe is clearly the case in this case.  
14 And the defense attorney would get up and argue something  
15 that to the jury that had absolutely nothing to do with  
16 the case in hopes of confusing them. Just like Mr. Heos  
17 has suggested by talking about these asbestos cases or  
18 some of these other cases that have nothing to do with  
19 this.

20 Well in this case, when you look at his  
21 responsive pleading, he talks about an accident situation  
22 that has absolutely no application here. Nothing to do  
23 with this case. While in his argument, he starts out  
24 talking about a discussion of the virus of racism and as  
25 there, as there, we would point out, if we were in front

1 of a jury, just like I'd point out to them and I'm  
2 pointing out to you, it hasn't got anything to do with  
3 this case. Your Honor, the reason for that and the reason  
4 for the topic of that is that he knows that neither the  
5 facts or the law support his claim and nothing he could  
6 file as an amendment would change that.

7 He is hoping to somehow create this little bit  
8 of possibility, some scintilla that some evidence is gonna  
9 pop up that shows that the property has been damaged in  
10 hopes that he could trigger coverage. And as this Court  
11 knows under the cases we've discussed in our brief, that  
12 is not sufficient to deny summary disposition in a case  
13 that clearly warrants it even at this early stage.

14 Thank you your Honor for your patience. Thank  
15 you Mr. Heos, we've never met. I've heard a lot of good  
16 things about you. Mr. Gavrilides, nice to have met you,  
17 very sorry for the situation you're in. It's just crazy  
18 all the way around. And just like having to argue this  
19 case on TV is really just disconcerting for me. But, in  
20 any event, thank you your Honor for your patience.

21 THE COURT: Thank you. You're on Youtube not TV.  
22 But--

23 MR. EMRICH: I meant screen. Yeah, whatever.

24 THE COURT: Right.

25 MR. EMRICH: The screen.

1                   THE COURT: I, I did read the briefs. I studied  
2                   them very carefully and I've listened to the argument of  
3                   counsel today. And taking all the-, that together I, I  
4                   note that the plaintiff speaks of and focuses on arguments  
5                   about access to the property, use of the property and  
6                   definitions of loss and damage. But, the first inquiry has  
7                   to start with a full look, not just isolating some words  
8                   or phrases from the policy. But, a full look at the  
9                   coverage that's provided under the policy.

10                  Coverage is provided for actual loss of business  
11                  income sustained during a suspension of operations. The  
12                  policy goes on to provide the 'suspension must be caused  
13                  by direct physical loss of or damage to property.' And it  
14                  also provides 'the loss or damage must be caused by or  
15                  result from a covered cause of loss. The causes of loss  
16                  special form provides that a covered cause of loss means  
17                  risks of direct physical loss.'

18                  So, whether we're talking about the cause for  
19                  the suspension of the business or the cause for the loss  
20                  or the damage, it is clear from the policy coverage  
21                  provision only direct physical loss is covered. Under  
22                  their common meanings and under federal case law as well,  
23                  that the plaintiff has cited that interprets this standard  
24                  form of insurance, direct physical loss of or damage to  
25                  the property has to be something with material existence.

1       Something that is tangible. Something according to the one  
2       case that the plaintiff has cited from the Eastern  
3       District, that alters the physical integrity of the  
4       property. The complaint here does not allege any physical  
5       loss of or damage to the property. The complaint alleges a  
6       loss of business due to executive orders shutting down the  
7       restaurants for dining, for dining in the restaurant due  
8       to the Covid-19 threat.

9               But, the complaint also states that a no time  
10       has Covid-19 entered the Soup Spoon or the Bistro through  
11       any employee or customer and in fact, states that it has  
12       never been present in either location. So, there simply  
13       are no allegations of direct physical loss of or damage to  
14       either property. The plaintiff seems to make in the  
15       briefing, at least, two arguments about the language in  
16       the coverage provision and what it means.

17              The first argument is that the plaintiff says  
18       coverage applies to "direct physical loss or damage to  
19       property." Even if that were the wording of the coverage  
20       provision, it wouldn't save the plaintiff from the  
21       requirement that the loss or damage must be physical and  
22       the analysis could end right there. But, I have to go on  
23       to say that this is not even the wording of the coverage  
24       provision. Coverage according to the policy applies to a  
25       suspension caused by "direct physical loss of or damage to

1 property." So, I'm not going to get into a detailed  
2 analysis of the rules of grammar. But, common rules of  
3 grammar would apply to make that phrase a short-cut way of  
4 saying "direct physical loss of property or direct  
5 physical damage to property." So, again, the plaintiff  
6 just can't avoid the requirement that there has to be  
7 something that physically alters the integrity of the  
8 property. There has to be some tangible, i.e., physical  
9 damage to the property.

10 Then the plaintiff in the briefing, at least,  
11 seems to make a second argument that and this is not 100%  
12 clear, but, it seems like the plaintiff is saying that the  
13 physical requirement is met because people were physically  
14 restricted from dine-in services. But, that argument is  
15 just simply nonsense. And it comes nowhere close to  
16 meeting the requirement that there's some, there has to be  
17 some physical alteration to or physical damage or tangible  
18 damage to the integrity of the building.

19 So, the next argument that the plaintiff makes  
20 is that the virus and bacteria exclusion is vague and  
21 can't apply here. The plaintiff has not adequately  
22 explained how the term virus is vague. And in fact,  
23 supplies a completely workable, understandable, usable  
24 definition of the word virus. The argument in this regard  
25 really seems to be more that the virus exclusion doesn't

1       apply. And it goes something like this as far as I can  
2       tell, first, a virus can't cause physical loss or damage  
3       to property because virus' harm people, not property.  
4       Second, the damage caused here was really caused by  
5       actions of the civil authority to protect public health.  
6       And then third, therefore, coverage for acts of any  
7       person, group, organization or governmental body applies.  
8       But, that argument bring us right back to the direct  
9       physical loss or damage requirement. Again, going back to  
10      the cause of loss special form B, as in boy, exclusions  
11      provides that acts of government are only covered when  
12      they result in a covered cause of loss. A covered cause  
13      of loss, again, is direct physical loss. So, even if the  
14      virus exclusion did not apply, which the plaintiff has not  
15      supported that it doesn't apply, I only argue that it's  
16      vague, which I reject. But, even if it did not apply, it  
17      could only be coverage for governmental actions that  
18      resulted in direct physical loss or damage.

19               And then, finally, the plaintiff argues that the  
20      policy has a contradiction in it that renders it illusory.  
21      So, the plaintiff says that the policy extends coverage  
22      for governmental acts. But, then, it takes it away in the  
23      causes of loss special form. But, that's simply not true.  
24      Coverage is provided for actual loss of business income  
25      sustained during the suspension of operations. However,



1 according to the coverage provision, the suspension must  
2 be caused by direct physical loss of or damage to  
3 property. And governmental acts are likewise covered if  
4 it results in a covered cause of loss, which is again, a  
5 direct physical loss. There is no granting of coverage  
6 and then excluding the same coverage in the policy. As a  
7 matter of fact, the policy is consistent throughout and  
8 consistent with federal law cited by the plaintiff. It  
9 requires physical loss or damage.

10 There is a virus exclusion even if plaintiff was  
11 alleging, was alleging, even if there were allegations in  
12 the complaint alleging actual physical loss or damage,  
13 which the complaint does not do. But, there is a virus  
14 exclusion that would also apply. And governmental action  
15 that results in direct physical loss is covered. But  
16 again, there is no direct physical loss alleged here.

17 Now, I have to address a little bit this, that  
18 it was brought as a (c)(10) motion. The actually the  
19 defendant hasn't provided any support by way of factual  
20 support, depositions, affidavits, et cetera, for a (c)(10)  
21 motion. So, if the defendant doesn't do that, then the  
22 plaintiff has no burden under Maiden versus Rosewood. So,  
23 there's no shifting burden until the moving party first  
24 does it. But, I don't think it properly is labeled a  
25 (c)(10) motion. I think it's a (c)(8) motion. Because this

1 is the motion that can be decided as a matter of law. Take  
2 all the allegations in the complaint as true and examine  
3 nothing more than the contract upon which the complaint is  
4 based, the policy of insurance and as a matter of law, the  
5 plaintiffs complaint cannot be sustained. And although the  
6 plaintiff has requested a chance to amend without any  
7 indication of how they would do that, there actually is no  
8 factual development that could change the fact that the  
9 complaint is complaining about the loss of access or use  
10 of the premises due to executive orders and the Covid-19  
11 virus crisis. So, there's no factual development that  
12 could possibly change that or amendment to the complaint  
13 that could possibly change that those things do not  
14 constitute the direct physical damage or injury that's  
15 required under the policy as I've outlined.

16 So, for those reasons, I am granting the  
17 Defendant's Motion for Summary Disposition. I'm doing it  
18 under MCR 2.116 (c)(8). And Mr.—

19 MR. EMRICH: Thank you, your Honor.

20 THE COURT: Mr. Emrich, will you submit an order?

21 MR. EMRICH: Certainly will, your Honor.

22 THE COURT: Okay.

23 MR. EMRICH: Thank you.

24 THE COURT: Thank you.

25 MR. HEOS: Thank you very much.

THE COURT: That will conclude our hearing.

(Hearing concludes at 3:32:35 PM.)

STATE OF MICHIGAN)

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COUNTY OF INGHAM)

I certify that that this transcript, consisting of 24 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on Wednesday, July 01, 2020.

July 09, 2020

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